

The Honorable Timothy W. Dore
Chapter 7
Hearing: August 9, 2019, 9:30 a.m.
Seattle
Response due: August 2, 2019

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

IN RE:

THOMAS RAOUL WILLIAMSON and
JUDITH AYA WILLIAMSON,

Debtors.

NO. 18-10441

REPLY IN SUPPORT OF OBJECTION
TO CLAIM NO. 4 OF GRASSMAN-
MONTGOMERY ENTERPRISES

Grasman-Montgomery Enterprises' response to the Williamsons' objection to the claim fails to raise any issue of disputed material fact. The objection to claim should be sustained.

GME's response does not take issue with any of the facts presented in the objection. Critically, GME does not dispute that the fees awarded by Judge Downing related exclusively to the promissory note litigation and had nothing to do with enforcement of the deed of trust. Judge Downing concluded that the Williamsons "were ultimately unsuccessful in eliminating their overarching obligations under the Note that remained payable to GME. Accordingly, that prevailing party—GME—is entitled to its fees and costs in enforcing the Note." Final Award, Williamson Declaration Exhibit D, at pp. 13-14. GME would find it challenging to take any different position, since Mr. Milburn in his declaration

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WENOKUR RIORDAN PLLC
ATTORNEYS AT LAW
600 STEWART STREET, SUITE 1300
SEATTLE, WASHINGTON 98101
206.682.6224 (WENOKUR)
206.903.0401 (RIORDAN)

1 (Williamson Exhibit E) had stated that the “vast majority” of billed time related to the note, and in his
2 hearing brief (Williamson Exhibit F) stated that he “did not take a single step to initiate a non-judicial
3 foreclosure.”

4 The parties are reading the same documents, but coming to different legal conclusions.
5 GME’s reading is incorrect. The fees were awarded under a fee-shifting provision of the promissory
6 note. The note (at ¶ 5) says that the fees get added to the note principal. The deed of trust provides that
7 only \$100,000 of the promissory note is secured. Thus, any principal amount owed under the note that
8 exceeds \$100,000 falls outside of the security interest in the real property.
9

10 GME emphasizes language in the deed of trust allowing for fees. Those deed of trust provisions
11 plainly relate to fees incurred in connection with enforcement of rights against the collateral. Section 32
12 relates to fees incurred in protecting the beneficiary’s interest under the deed of trust. Section 33 relates
13 to reimbursement of expenses related to the real property (not just fees but also taxes or payment of
14 senior lien positions) necessitated by a default.

15 GME’s problem, however, is that the actual fees at issue were not incurred in enforcing rights
16 under the deed of trust. That there had been claims asserted in a complaint related to the deed of trust is
17 unimportant. The issue is whether the fees awarded by the arbitrator were in fact incurred in connection
18 with enforcement of rights against GME’s collateral. They were not. GME took no action to enforce the
19 deed of trust. GME’s litigation efforts that resulted in the fee award related solely to the note. The deed
20 of trust caps the amount securing the note at \$100,000.
21

22 GME does not really take issue with the Williamsons’ argument regarding the proper rate of
23 postdefault interest. The deed of trust explicitly provides for a 4.5% rate following default. The
24 arbitration award does not provide for any different rate.

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1 GME argues that the arbitration award would have become a judgment entitled to 12% statutory
2 interest if the judgment had been recorded, but that the “intervening bankruptcy filing” precluded
3 recordation. Response at 6:18. Even if (notwithstanding the plain language to the contrary in the deed
4 of trust) a recorded judgment would have boosted the interest rate to 12%, the arbitration award was
5 obtained in late November 2017 but the bankruptcy filing was not until February 2, 2018. GME had
6 about two months to record the award. It is hard to see how the bankruptcy filing “intervened” in a way
7 that prevented GME from converting the award to a recorded judgment.
8

9 The claim should therefore be allowed as a secured claim for \$100,000 plus postdefault interest
10 at 4.5%. The remainder of the claim is unsecured.

11 DATED August 6, 2019.

12 WENOKUR RIORDAN PLLC

13 */s/ Alan J. Wenokur*

14 Alan J. Wenokur, WSBA #13679
15 Attorneys for Debtors
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